

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 138 OF 1996

Rajaram Hari Nandurkar

.. Appellant

vs

State of Maharashtra ..

Respondent

Mr.X.A.Sakhare,
Appellant
Ms.V.R.Bhosale,

Advocate

(appointed)

for

A.P.P.for

Respondent

CORAM : SMT.RANJANA P.DESAI, J

DATED : 12th September, 2007

ORAL

JUDGMENT

1. The appellant is original accused no.2 in Sessions Case No.146 of 1995. He was tried alongwith original accused nos. 1 and 3 for offences punishable under section 326, read with section 34 of the Indian Penal Code. For the sake of convenience, I shall refer to the accused as per their status and description in trial.

2. By the impugned judgment dated 2nd March, 1996 the learned Additional Sessions Judge acquitted accused nos. 1 and 3 for the offences punishable under section 326 read with section 34 of IPC. He however, convicted accused no.2 for offence under section 324 of IPC and sentenced him to under go R.I. for one year and to pay a fine of Rs.500/- in default to undergo further R.I.for 4 months. Being aggrieved by the said judgment and order, accused no.2 has preferred the instant appeal.

3. The prosecution story as unfolded by PW 3 Sarjerao is that Arjun Rangrao and Shivaji are his brothers. He knows all the accused. Accused no.2 is the brother in law of accused no.1 Jagannath. Accused no.3 Dada @ Rajaram is son of accused no.1's wife's sister. PW 4 Hausabai is wife of Arjun.

4. The incident in question took place on 22nd November, 1990. About 8 to 10 days prior to the incident in question, Hausabai had gone for agricultural work in the field of one Raghunath. While she was returning home with a bundle of grass on her head, accused no.1 dislodged the bundle of grass which she was carrying. He abused and assaulted her. He asked her why she did not come to his field for work. According to PW 3 Sarjerao this was disclosed to him by Hausabai. On the same day, he went to the house of Jagannath and asked why he had assaulted Hausabai. Accused no.1 abused him. PW 3 Sarjerao then went home. On 22nd December, 1990 at about 6.30 p.m. he was sitting near Benor office. It was a weekly market day. Accused no.1 Jagannath and accused no.2 Rajaram were sitting on the steps of Benor office. He was sitting at a short distance from there. He asked them why there should be quarrel between the two. He expressed that it was not proper to have any quarrel. There was exchange of words between the two sides. Accused no.2 Rajaram stood up, went at the back of PW 1 Sarjerao and attacked him with a

chopper on his back. Accused no.1 had axe in his hand. Accused no.3 had a stick and accused Krishna also had a stick. Accused no.1 Jagannath dealt an axe blow on his head. Accused no.3 Dada dealt a stick blow on his ear and accused Krishna dealt a stick blow on his abdomen. He raised a cry. PW1 intervened and rescued him. The accused ran away. PW 3 Sarjerao became unconscious. He regained consciousness in C.P.R.Hospital, Kolhapur. He came to know that he was first taken to hospital at Kodoli. In the hospital his FIR was recorded. It is at Exhibit 15. He was then taken to Mary Wanless Hospital, Kolhapur and treated there. He was a indoor patient for about 10 days. On the basis of the FIR. lodged by PW 3 Sarjerao investigation was set into motion. After completion of the investigation, the accused came to be charged as aforesaid.

5. In support of its case, the prosecution examined as many as 10 witnesses. The prosecution story basically rests on the evidence of PW 3 Sarjerao the injured witness. The medical evidence comprises evidence of PW 5 Dr.Tivade and PW 9 Dr.A.K.Thorat and medical certificates issued by them. The details of the investigation have been given by PW 8 PSI Ishwar Patil who was at the relevant time in-charge of Police Station, Kodoli.

6. The defence of the accused was one of denial. According to the accused, there was a dispute between accused no.1 Jagannath and P W 3 Sarjerao

and his brothers over the installation of a gobar gas plant. Sarjerao and his brother assaulted accused no. 1 Jagannath and accused no.2 Rajaram. Rajaram therefore lodged an FIR against them in order to create defence and a false case has been filed against them.

7. As stated hereinabove, the learned Sessions Judge acquitted accused nos. 1 and 3 and convicted accused no.2 for the offence under section 324 IPC and sentenced him to suffer R.I. for one year and to pay a fine of Rs.500/- in default to undergo R.I. for a period of 4 months. Hence, this appeal

8. I have heard Mr.Sakhare the learned counsel

appearing for the appellant-accused at considerable length. Mr.Sakhare submitted that the learned Judge has fallen into a grave error in convicting the accused in the absence of any cogent and credible evidence on record. Mr.Sakhare urged that in this case, the prosecution has failed to prove any motive. In fact, the learned Sessions Judge has categorically recorded that accused no.,2 had no motive to assault Sarjerao as he had no enmity with him. It was therefore wrong on the part of the learned Sessions Judge to convict him. The learned counsel further urged that it is alleged that the appellant used a chopper. The discovery of the chopper has not been proved as the panchas have turned hostile. PSI Patil has in his evidence stated that the said chopper was not

stained with blood. Besides, this chopper was not sent to the Chemical Analyser for analysis. In the circumstances, the allegation that accused no.2 used a chopper to attack Sarjerao is not proved. Mr.Sakhare further urged that the evidence on record indicates that it is Sarjerao who was the aggressor. He had a chopper in his hand. Mr.Sakhare pointed out that this fact has been noticed by the learned Sessions Judge. He submitted that it is also pertinent to note that accused no.2 was also injured in the said incident. There is therefore, ample evidence on record to indicate that at the most it can be said that accused no. 2 acted in exercise of his right of private defence. The learned counsel then urged that there is no consistency between the evidence of PW 3 Sarjerao Bhakare and PW 4 Hausabai Bhakare. This also makes the prosecution story inherently improbable. Learned counsel further submitted that on the same set of evidence two of the accused have been acquitted. There is therefore, no guarantee that the prosecution story as regards the involvement of the present appellant/ accused no.2 is truthful. He submitted that in the circumstances, conviction and sentence of the appellant/accused no.2 deserves to be set aside.

9. As against this, Ms.Bhosale, the learned A.P.P.submitted that the learned Sessions Judge has rightly placed reliance on the injured witness PW 3 Sarjerao Bhakare. PW 3 Sarjerao had no reason to falsely implicate innocent persons. PW 3

Sarjerao's evidence is supported by the evidence of PW 4 Hausabai. In the circumstances, the learned A.P.P. urged that this Court may not interfere with the impugned judgment and order. She therefore, submitted that the appeal be dismissed.

10. Before dealing with the submissions advanced by the learned counsel Mr.,Sakhare, it must be stated that in respect of the same incident a counter case was registered at the instance of accused no.2 herein. In respect of the said complaint, PW 1 Sarjerao Bhakare and others were tried in Sessions case No.62 of 1991 and PW 1 Sarjerao was found guilty of the offence under section 326 IPC and sentenced to undergo R.I. for two years and to pay a fine of Rs.500/- in default to undergo RI for a further period of 4 months.

11. There can hardly be any dispute that on 22nd December, 1990 some incident did take place in which accused no.1 Jagannath and accused no.2 Rajaram and PW 1 Sarjerao were injured. In this connection, it is necessary to first refer to the evidence of PW 5 Dr.Devdatta Tivade who was at the relevant time working in Mary Wanless Hospital, Kolhapur. In his evidence he has stated that on 23rd December, 1990 PW 3 Sarjerao Bhakare was admitted in the hospital and he has examined him. He has also proved certificate Exhibit 18 which was issued by him. He noticed following injuries on Sarjerao :

1. On back of right shoulder oblique 3 " in length having 10 sutures.

2. On right eye above eye brown ear lateral angle transverse 2 " in length having one suture.

3. On left ear on upper cantus 2" in length with 2 sutures.

12. PW 9 Dr.A.K.Thorat was at the relevant time attached to Rural Hospital, Kodoli. He stated that on 22nd December, 1990 at about 10.30 p.m he examined PW 3 Sarjerao Bhakare. He has described the injuries on Sarjerao as under:

1. Incised injury on right scapula with suspected fracture of scapula bone size 3 x 1

2. 2 contused lacerated wounds on right eye brow 2 horizonital and on vertical on the lateral and size each 2 cms x 1/2 x 1/2 cms.

3. Incised wound of about 1 cm x 1/2 cm on left ear lobule upper side over tragg. It was 1/2 cm deep.

4. Incised wound 3 x 1/2 cms superficial over left supra scapular fossa.

5. CLW on left lateral eye brow of about 1 1/2 x 1/2 cm superficial circular in shape.

He has stated that injuries no.1,3 and 4 were grievous.

13. In his cross examination, Dr.Thorat has stated that on the same day at 8.15 p.m he examined accused no.1 Jagannath Hari More and found the following injuries :

1. At the level of C2 vertibra on posterior aspect of the neck of the size 13 cms x 2 cms deep starting from 2 cms to the right of the midline and going towards left side of neck.

2. 7 cms x 1 cm x 1 cm on the ventral

aspect of the right wrist on the lower and joint.
 of radioulner
 right 3. 2 cm x 1 cm x 1 cm on the root of the
 1 thumb in the line of injury no.2 about
 cm away from it.
 frontal 4. 5 cm x 1/2 cm on sigital suture over the
 all bone. The bleeding was present on
 the injuries.

He has stated that injury no.1 was dangerous to
 life. He has further stated that on the same day,
 he examined accused no.2 Rajaram Hari Nandurkar and
 found the following injuries on his person :

1. 3 cms x 1 cm x 1 cm on the index finger
 at terminal phalynx and 2nd phalynx with
 suspected fracture of phalangial bones of
 the finger.

2. 3 cm x 1 cm x 1 cm over qst distal
 phalynx of middle finger with suspected
 fracture of the phalangial bones.

He has stated that both the injuries were
 grievous.

14. From the above evidence, it appears that in
 the incident in question persons from both sides
 were hurt. The question is whether in this case
 the prosecution has proved that the grievous
 injuries on PW 3 Sarjerao Bhakare were caused by
 accused no.2

15. At the outset, it must be stated that PW 1
 Biru Yeshwant who was examined as an eye witness
 has turned hostile. So far as the alleged
 involvement of accused nos. 1 and 2 is concerned,
 the learned Sessions Judge has come to the
 conclusion that the prosecution has not been able

to prove its case against them. He therefore, acquitted them. In the circumstances, the evidence of PW 3 Sarjerao Bhakare will have to be read cautiously to find out whether he is a reliable witness. It is pertinent to note that in his cross examination PW 3 Sarjerao has stated that four days prior to the incident in question, he had come to know that accused no.1 Jagannath had assaulted Hausabai and had asked her as to why she did not come to work in his field. According to him, this was disclosed to him by Hausabai. He has stated that on the following day, Arjun, the husband of Hausabai returned to the village. He did not tell Arjun about the alleged incident. He did not talk about it to his brothers Rangrao and Shivaji. This conduct is unnatural. It is inconceivable that a man would not disclose such a major incident to any one particularly to husband of Hausabai who was assaulted by accused 1. PW 4 Hausabai has on the other hand stated that after this incident on the next morning she narrated the matter to Rangrao brother of her husband. On that day she disclosed it to PW 3 Sarjerao. Thus, the evidence of Sarjerao and Hausabai is not consistent.

16. So far as the case of the prosecution that a chopper was recovered at the instance of accused no.2 is concerned assuming it to be true, the alleged recovery is of no consequence as the chopper was not blood stained. As per the evidence of PSI Patil, it was not sent to the Chemical Analyser. The panchas to the discovery of the

chopper have turned hostile. Therefore, this circumstance does not help the prosecution. In fact, the use of a chopper by Sarjerao becomes doubtful. I have already noted that the accused no.2 was injured and PW 9 Dr.Thorat has stated that both the injuries received by accused no.3 were grievous. The prosecution has not been able to explain the injuries suffered by accused no.2.

17. In this connection, reference may be made to the judgment of the Supreme Court in Lakshmi Singh vs State of Bihar AIR 1976 SUPREME COURT 2263. In that case, the Supreme Court has examined the consequences of non-explanation of injuries suffered by the accused by the prosecution. The Supreme Court has observed that non-explanation of injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :

- (a) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.
- (b) That the witnesses who have denied the presence of the injuries on the person of the accused and are lying on a most material point and therefore, their evidence is unreliable.
- (c) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

18. It is pertinent to note that in the present case, PW 3 Sarjerao has stated that he did not see any injuries on accused no.1 Jagannath and accused

no.2 Rajaram. He has stated that he and his brothers did not assault accused nos. 1 or 2. He has further admitted that Sessions case no.62 of 1991 was filed against him and his brother on the allegation that at the time and place of the incident, they assaulted Jagannath and Rajaram and attempted to commit murder of Jagannath. Therefore, it is clear that the prosecution has suppressed the genesis of the case. The grievous injuries on accused no.2 are not explained. Considering the fact that the evidence of PW 3 Sarjerao Bhakare is not found worthy of reliance so far as the involvement of other accused in the instant crime is concerned, I find it risky to rely upon his evidence to come to a positive finding about the complicity of accused no. 2. His evidence does not inspire confidence. It was argued that there is no reason why he should involve innocent persons. Ordinarily, I would have accepted this submission. But, in the peculiar facts and circumstances of the case where PW 3 Sarjerao Bhakare has denied that accused no. 1 Jagannath and accused no. 2 Rajaram had received any injuries when in fact both had received serious injuries and considering the fact that his evidence implicating accused nos. 1 and 3 is found to be unreliable, the possibility of his falsely involving accused no.2 also cannot be ruled out. There is no corroboration to the case of the prosecution that accused no.2 is the person who assaulted Sarjerao Bhakare. Barring the interested testimony of Sarjerao, no independent witness has

supported the prosecution case. In the circumstances, in my opinion accused no.2 must get the benefit of doubt.

Hence, the following order :

The impugned judgment and order dated 2nd March, 1996 passed by the Additional Sessions Judge, Kolhapur in Sessions case No.146 of 1995 convicting the accused Rajaram Hari Nandurkar under section 324 I.P.C.and sentencing him to undergo R.I. for one year and to pay a fine of Rs.500/- in default to suffer R.I. for four months is quashed and set aside. Accused no.2 Rajaram Hari Nandurkar is on bail. He need not surrender. His bail bonds stand cancelled.

Appeal allowed accordingly.

(Smt Ranjana Desai, J)